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and Center for Democracy & Technology*

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

ETHAN ZUCKERMAN,

Plaintiff,

v.
META PLATFORMS, INC.,

Defendant.

Case No. 3:24-cv-02596-JSC

**NOTICE OF MOTION AND
MOTION FOR LEAVE TO FILE
AMICI CURIAE BRIEF BY
ELECTRONIC FRONTIER
FOUNDATION, AMERICAN CIVIL
LIBERTIES UNION OF
NORTHERN CALIFORNIA, AND
CENTER FOR DEMOCRACY &
TECHNOLOGY**

Date: October 10, 2024

Time: 10:00 a.m.

Judge: Hon. Jacqueline Scott Corley

1 PLEASE TAKE NOTICE that at **10:00 a.m. on October 10, 2024**, the Electronic Frontier
 2 Foundation, American Civil Liberties Union of Northern California, and Center for Democracy &
 3 Technology (collectively “*Amici*”) will move for leave to file a brief as *amici curiae* during the
 4 Court’s consideration of Defendant Meta’s Motion to Dismiss the Amended Complaint filed by
 5 Plaintiff Ethan Zuckerman.

6 *Amici* respectfully move for leave to file a brief as *amici curiae* in the above captioned
 7 matter. The proposed brief is attached hereto as an exhibit to the motion. Before filing, counsel for
 8 *Amici* conferred with both counsel for both parties. Parties do not object to the filing of this motion.
 9 For the reasons that follow, the motion should be granted.

10 **I. Identity and Interests of *Amici Curiae***

11 *Amici* are three nationally prominent non-profit organizations focused on civil liberties and
 12 technology. They are all experts in intermediary liability and Section 230 (47 U.S.C. § 230) and
 13 have filed numerous briefs in federal and state courts across the country on these issues, including
 14 in the U.S. Supreme Court in *Gonzalez v. Google LLC*, 598 U.S. 617 (2023).¹

15 The Electronic Frontier Foundation (EFF) is a member-supported, nonprofit civil liberties
 16 organization based in San Francisco that works to protect free expression, privacy, and innovation
 17 in the digital world. Founded in 1990, EFF has more than 30,000 dues-paying members worldwide.
 18 EFF regularly participates in a broad range of intermediary liability cases because they often raise
 19 novel issues surrounding free expression and the rights of internet users. In particular, EFF opposes
 20 efforts to weaken Section 230 because doing so jeopardizes internet users’ free speech.²

21 The American Civil Liberties Union of Northern California is the Northern California

22
 23 ¹ All three *amicus* briefs are available at
 24 <https://www.supremecourt.gov/search.aspx?filename=/docket/DocketFiles/html/Public/21-1333.html>.

25 ² EFF notes that Plaintiff in the instant case, Ethan Zuckerman, is on EFF’s Advisory Board.
 26 Advisory Board members are available to provide advice to EFF upon request, but have no role in
 27 EFF’s governance or day-to-day operations. Advisory Board members do not have any decision-
 28 making authority over EFF’s work including what legal positions to take, and whether to file
amicus briefs or otherwise engage in litigation. Plaintiff played no role in the authorship of this
 brief. See EFF, *Advisory Board*, <https://www.eff.org/about/advisoryboard#main-content>.

1 affiliate of the American Civil Liberties Union (ACLU), a nationwide, nonprofit, nonpartisan
 2 organization dedicated to defending the principles embodied in the federal Constitution and our
 3 nation's civil rights laws. The ACLU and its affiliates share a longstanding commitment to digital
 4 rights. The ACLU of Northern California has a Technology and Civil Liberties Program, founded
 5 in 2004, which works specifically on legal and policy issues at the intersection of new technology
 6 and privacy, free speech, and other civil liberties and civil rights. Since its founding in 1920, the
 7 ACLU has frequently appeared before the U.S. Supreme Court, this Court, and other federal courts
 8 in cases related to free speech and freedom of association, including exercise of those rights online.

9 The Center for Democracy & Technology (CDT) is a nonprofit public interest organization.
 10 For over 25 years, CDT has represented the public's interest in an open, decentralized internet and
 11 worked to ensure that the constitutional and democratic values of free expression and privacy are
 12 protected in the digital age. CDT regularly advocates before legislatures, regulatory agencies, and
 13 courts in support of free expression on the internet, including limits on governmental authority to
 14 compel or silence speech, and in support of privacy protections for online users.

15 **II. Amici's Brief Will Assist the Court's Review of Plaintiff's Request for a**
 16 **Declaration of Immunity Under Section 230(c)(2)(B)**

17 The *amici curiae* brief will assist this Court's review of Plaintiff's request that his Unfollow
 18 Everything 2.0 tool be immune from suit. The brief provides textual analysis and historical and
 19 modern context regarding the third immunity within Section 230 (47 U.S.C. § 230)—Section
 20 230(c)(2)(B)—which is lesser known and has been litigated far less frequently than the immunities
 21 found in Section 230(c)(1) and Section 230(c)(2)(A), but is no less important. “The district court
 22 has broad discretion to appoint amici curiae.” *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir.
 23 1982), abrogated on other grounds as recognized in *Doe v. Kelly*, 878 F.3d 710, 720 (9th Cir.
 24 2017). “District courts frequently welcome amicus briefs from non-parties concerning legal issues
 25 that have potential ramifications beyond the parties directly involved or if the amicus has ‘unique
 26 information or perspective that can help the court beyond the help that the lawyers for the parties
 27 are able to provide.’” *NGV Gaming, Ltd. v. Upstream Point Molate, LLC*, 355 F. Supp. 2d 1061,
 28 1067 (N.D. Cal. 2005) (internal citations and quotations omitted).

1 *Amici* are nonprofit organizations that represent the interests of internet users and so have
2 an interest in ensuring the broad application of Section 230(c)(2)(B) immunity to developers of
3 user-empowerment tools that enable people to better control their online experiences. The *amicus*
4 brief discusses the text of Section 230 itself and its legislative history, which together reflect a clear
5 intent by Congress to provide immunity for developers of third-party blocking and filtering tools
6 like Plaintiff’s Unfollow Everything 2.0.

7 The brief also explains that Section 230(c)(2)(B), by incentivizing the tools that enable
8 delegability, helps make the internet better for both the people who use the internet and the
9 companies that provide the communications platforms—people are able to craft the online
10 experiences that align with their preferences and companies often improve their services consistent
11 with those preferences.

12 The brief also explains that Section 230(c)(2)(B) advances privacy and free speech rights
13 online by incentivizing the development of data-protecting tools and incentivizing third-party user-
14 empowerment tools generally, which Congress and the courts have considered to be the preferred
15 alternative to unconstitutional speech regulation.

16 The brief further highlights the wide variety of technologies currently on the market that,
17 like Unfollow Everything 2.0, help internet users manage the various ways they interact online,
18 from seeing the content they want, to protecting themselves from malicious actors.

19 Finally, the brief analyzes the textual basis for granting Unfollow Everything 2.0 immunity
20 under Section 230(c)(2)(B) from potential civil suit by Meta, including arguing that Section
21 230(c)(2)(B) cannot be read to exclude contract claims, especially those based on a company’s
22 Terms of Service, from the scope of the immunity—doing so would subvert congressional intent
23 and be contrary to Ninth Circuit precedent.

24 *Amici* respectfully request that this Court grant their motion for leave to file the attached
25 *amicus* brief.

1 Dated: September 5, 2024

Respectfully submitted,

2 By: /s/ Sophia Cope

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